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No. 02-361

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA, ET AL., *Appellants,*

v.

AMERICAN LIBRARY ASSOCIATION, INC., ET AL., *Appellees.*

On Appeal From the United States District Court
for the Eastern District of Pennsylvania

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INTEREST OF AMICI*

The American Center for Law and Justice (ACLJ) is a public interest law firm committed to insuring the ongoing viability of constitutional freedoms in accordance with principles of justice. ACLJ attorneys have argued or participated as amicus curiae in numerous cases involving constitutional issues before this Court and lower federal courts, and Chief Counsel Jay Alan Sekulow has presented oral argument before this Court in eight cases.

As a public interest law firm, the ACLJ is dedicated to defending families against efforts to undermine their sovereignty, nature, and importance. Moreover, the ACLJ is committed to supporting appropriate efforts by Congress and the States toward the creation and sustenance of a social order that supports the important work of families: the rearing and protection of children. The proper resolution of this case is a matter of substantial organizational concern to the American Center for Law and Justice because of the ACLJ's commitment to American families.

This brief is also filed on behalf of Representatives Robert B. Aderholt, Todd Akin, Michael Collins, Jo Ann S. Davis, Duncan Hunter, Ernest Istook, Jr., Charles Pickering, Jr., Jim Ryun, John M. Shimkus, and John Sullivan. These amici currently are members of the United States House of Representatives in the One Hundred Eighth Congress. These Representatives disagree with the district court's decision in

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* This brief is filed with the consent of the parties, and letters indicating such consent have been filed with the Court. Pursuant to Rule 37.6, amicus ACLJ discloses that no counsel for any party in this case authored in whole or in part this brief and that no monetary contribution to the preparation of this brief was received from any person or entity other than *amicus curiae*.

American Library Assoc. v. United States and urge this Court to reverse it.

SUMMARY OF THE ARGUMENT

The question in this case is whether the First Amendment confers a right on library patrons to have government-subsidized, immediate access to all legal Internet materials by means of public library computers. To answer this question requires forum analysis, and the first step in that analysis is to identify the forum at issue. The forum at issue in this case is library computers, not the Internet. The central fault of the district court's decision was the court's conflation of these two different fora. Every error in the district court's opinion stems from this confusion. By focusing primarily on the nature of the Internet, and on the access sought by library patrons, the court ignored the centrality of government intent in its forum analysis. *See American Library Assoc. v. United States*, 201 F. Supp. 2d 401, 455-56 (E.D. Pa. 2002). Consequently, the court disregarded overwhelming record evidence that public libraries intend to regulate the use of their computers for Internet access in accordance with the same principles that govern the acquisition of other materials in their collections.

The vast majority of libraries attempt to restrict the use of their computers to research purposes, routinely barring patrons from using library computers with Internet access for entertainment, interpersonal communication, shopping, and the indulgence of prurient interests. *Id.* at 422-23. There is no constitutionally significant difference between the control libraries exercise over their collections as a whole, and the control they attempt to exercise over Internet access on their computers. The unmanageable size of the Internet and the resulting fact that libraries cannot review Internet materials as effectively as other materials does not justify depriving

libraries of reasonable measures, including filters, to regulate the use of their computers. The technical impossibility of excising only illegal materials from the Internet should not serve as a constitutional barrier to the use of filters when libraries already bar patrons from accessing other legal materials on the Internet. This Court's public forum doctrine does not require balkanization of a public library's collection such that a public library's control over scarce resources varies from medium to medium. A library's collection is a nonpublic forum, and public libraries may, consistent with the First Amendment, retain editorial control over all sources of information within the library's collection.

Confusing the Internet with public library computers also led the district court to erroneously conclude that a library's use of filtering technology distorts the medium of the Internet. Unlike the cases in which this Court has struck down laws that targeted speech within a medium because they distorted the medium's usual functioning,[1] filters have no effect on the Internet itself. Filters only affect what is accessible on a specific computer. Internet speech remains intact and is accessible on innumerable other computers and from other sources. If a library's use of filters distorts the Internet, then a library's decision to discard the classified ads from a single newspaper distorts the news media.

Finally, library patrons do not have a constitutional right to anonymous and immediate access to Internet materials on library computers. The district court erred in holding that the First Amendment confers such a right that is violated if patrons must request the disabling of a filter that has blocked constitutionally protected material. The First Amendment provides no warrant for extending this Court's decisions affirming a right to receive information

[1] *See, e.g., Legal Services Corp. v. Velazquez*, 531 U.S. 533 (2001); *FCC v. League of Women Voters*, 468 U.S. 364 (1984).

anonymously to information obtained on government property at government expense. The creation of such a right threatens the existence of public libraries, which must require patrons to divulge their identity in a number of ways.

Because public libraries may use filters to regulate Internet access on their computers without violating the First Amendment, the Children's Internet Protection Act, which merely encourages the use of filters, is constitutional.

ARGUMENT

The First Amendment does not confer a right on library patrons to have government-subsidized, immediate access to all legal Internet materials by means of public library computers. This Court repeatedly has rejected the notion that constitutional rights must be subsidized by the government to be fully realized. *See NEA v. Finley*, 524 U.S. 569, 585-88 (1998); *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 672-675 (1998); *Rust v. Sullivan*, 500 U.S. 173, 193-94 (1991). *Maher v. Roe*, 432 U.S. 464, 479 (1970). The First Amendment right to receive information does not obligate the government to provide instantaneous access to such information on government property, even if the government property is dedicated to the exchange of ideas.

I. THE FIRST AMENDMENT PERMITS PUBLIC LIBRARIES TO USE FILTERING TECHNOLOGY BECAUSE LIBRARY COLLECTIONS, INCLUDING COMPUTER TERMINALS WITH INTERNET ACCESS, ARE NONPUBLIC FORA, AND FILTERS HAVE NO EFFECT ON WHETHER SPEECH OCCURS.

As the district court recognized,[2] the proper analytical framework for evaluating the constitutionality of the Children's Internet Protection Act (CIPA) is provided in *South Dakota v. Dole*, 483 U.S. 203 (1987). Under *Dole*, when Congress attaches conditions to a state agency's receipt of federal funds, those conditions may not require the state agency to violate the Constitution. 483 U.S. at 208. CIPA's provisions are therefore unconstitutional only if the First Amendment forbids libraries from using filtering technology to ensure that scarce computer terminals are used in ways compatible with the library's mission. Because library computer terminals, like the rest of a library's collection, are nonpublic fora, libraries are free, under the First Amendment, to impose content-based restrictions, including filtering technology, on Internet access.

A. Government Intent is Central When Defining the Contours of a Government Forum.

The public's First Amendment right of access to government property depends upon the nature and character of the property. *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 800-01 (1985); *Perry Educ. Ass'n*

[2] *See American Library Assoc. v. United States*, 201 F. Supp. 2d 401, 450 (E.D. Pa. 2002).

v. *Perry Local Educators' Ass'n*, 460 U.S. 37, 45-47 (1983). With regard to property that is not a traditional public forum, the government's intent is the starting point in forum analysis, because "the government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse." *Cornelius* 473 U.S. at 802. Analyzing intent is crucial, because the "State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." *Greer v. Spock*, 424 U.S. 828, 836 (1976) (quoting *Adderley v. Florida*, 385 U.S. 39, 47 (1966)); *Perry Educ. Ass'n*, 460 U.S. at 46; *Cornelius*, 473 U.S. at 800. The "First Amendment does not guarantee access to property simply because it is owned or controlled by the government." *United States Postal Serv. v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 129 (1981). In particular, the state must have "substantial discretion" in determining how to allocate scarce resources to accomplish its mission. *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819, 829 (1995). Furthermore, "the government need not wait until havoc is wreaked to restrict access to a nonpublic forum. . . . The First Amendment does not forbid a viewpoint-neutral exclusion of speakers who would . . . hinder its effectiveness for its intended purpose." *Cornelius*, 473 U.S. at 810-11.

Where government resources, such as computer terminals, are scarce,[3] the centrality of governmental intent in forum analysis is inextricably linked to the promotion of First Amendment activity on government property:

[3] The district court found that in most public libraries, computer terminals are scarce, and that demand often exceeds supply. *See* 201 F. Supp. 2d at 465.

> We encourage the government to open its property to some expressive activity in cases where if faced with an all-or-nothing choice, it might not open the property at all. That this distinction [between general and selective access] turns on government intent does not render it unprotective of speech. Rather it reflects the reality that, with the exception of traditional public fora, the government retains the choice of whether to designate its property as a forum for specified classes of speakers.
>
> . . . .
>
> Were it faced with the prospect of cacophony, on the one hand, and First Amendment liability on the other, a public television broadcaster might choose not to air candidates' views at all. A broadcaster might decide "the safest course is to avoid controversy, ... and by so doing diminish the free flow of information and ideas."

Arkansas Educ. Television Comm'n v. Forbes, 523 U.S. 666, 680-81 (1998) (citations omitted). *Cf. Widmar v. Vincent*, 454 U.S. 263, 278 (1981) (Stevens, J., concurring) (where government facilities, such as university meeting rooms, are scarce, government may, consistent with the First Amendment, promote some uses over others).

The district court ignored the centrality of government intent in forum analysis. Examining this Court's public forum jurisprudence myopically, the district court held that the forum is defined by the "specific access that the plaintiff seeks." *See American Library Assoc. v. United States* 201 F. Supp. 2d 401, 455 (E.D. Pa. 2002). "[T]he right at issue in this case is the specific right of library patrons to access information on the Internet, and the specific

right of Web publishers to provide libraries with information via the Internet." *Id.* Thus, according to the district court, a library has no authority to restrict Internet access (other than for illegal materials), if a patron seeks access to all that is available on the Internet. The district court's forum analysis derailed on the superficially enticing, but false notion that because the Internet itself is a public forum, library computer terminals offering such access are public fora.

1. The district court ignored overwhelming evidence that public libraries intend to restrict the use of library computers in accordance with the principles that govern acquisition and retention of materials in their collection.

The district court had no trouble recognizing that library print collections are nonpublic fora. 201 F. Supp. at 462. Because libraries have limited resources, libraries must have the liberty to select materials in keeping with their missions. Due to the substantial amount of editorial discretion libraries exercise in acquiring their collections, such collections are nonpublic fora. *Cf. Arkansas Educ. Television Comm'n*, 523 U.S. at 675 (forum analysis is inappropriate because public broadcasting station has limited resources and must use editorial discretion in scheduling programming). *See also National Endowment for the Arts v. Finley*, 524 U.S. 569, 586 (1998) (forum analysis did not apply, in part, because the NEA's decisions about which art to subsidize necessarily involved content-based judgments).

The district court also recognized that library computers are part of a library's limited resources. *See* 201 F. Supp. 2d at 465. Shifting focus from the library's computers to the Internet itself, however, the court held that

because the Internet is "a vast democratic forum," content-based restrictions on access at library computers are subject to strict scrutiny. *Id.* at 463-64. Thus, the court concluded the First Amendment requires that library computers with Internet access serve as the conduit for all legal materials on the Internet, irrespective of how a library intends that its computers be used. In so holding, the district court failed completely to consider both the character of public libraries, as well as the current policies of the vast majority of public libraries offering Internet access.

While public libraries are certainly devoted to "freewheeling inquiry," *Board of Educ. v. Pico*, 457 U.S. 853, 915 (1982) (Rehnquist, J., dissenting), they are also "dedicated to quiet, to knowledge, and to beauty," *Brown v. Louisiana*, 383 U.S. 131, 142 (1966). There was abundant evidence in the record that the vast majority of public libraries impose content-based restrictions on Internet access in accordance with these principles. Many libraries prohibit the viewing of legal pornography. *See* 201 F. Supp. at 422-23. Many others prohibit the viewing of all sexually explicit materials. *Id.* at 423. Still others bar the use of e-mail, chat rooms, and computer games. *Id.* at 423. A recent report found that nearly half of all public libraries with Internet access use filtering technology.[4] The nearly universal use of content-based restrictions demonstrates an intent to control Internet access just as libraries control acquisition of their print collections. A library's offerings reflect the character of a public library as a place dedicated to the pursuit of knowledge. Libraries do not intend to confer carte blanche access to their computer terminals just because the Internet is an unlimited medium.

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[4] *See* Cheryl Wetzstein, *Study Finds Porn Filters Leave Health Web Sites*, WASHINGTON TIMES, Dec. 11, 2002, available at http://www.washtimes.com/national/20021211-57400.htm.

More importantly, the ability to impose content-based restrictions on Internet access is clearly crucial to many libraries' decision to offer such access. Faced with the Hobson's choice thrust upon them by the district court's decision, many libraries will undoubtedly cease offering Internet access. Fears about stanching the "free flow of information and ideas," *Arkansas Ed. Television*, 523 U.S. at 681, will become reality. It is hard to see how the public interest will be better served by having no public Internet access than substantially increased, free Internet access with limited restrictions. Surely, this is not what the First Amendment requires.

The district court's decision has disturbing implications for any government entity that provides computers with Internet access. If "the access that is sought," is the dispositive factor, *see* 201 F. Supp. 2d at 455, and providing Internet access on a government computer converts the computer into a public forum by virtue of the nature of the Internet as a vast democratic forum, government entities are constitutionally barred from placing content-based restrictions on the use of those computers. Thus, a state law restricting public employees from accessing sexually explicit materials on the Internet while using government computers would presumably be unconstitutional. *See, e.g.*, Va. Code Ann. §§ 2.1-804 to -806 (Michie Supp. 1999). As one federal appellate court has already held, such a bizarre conclusion finds no refuge in the First Amendment, even when the government property at issue is dedicated to the free exchange of ideas. *See Urofsky v. Gilmore*, 216 F.3d 401 (4th Cir. 2000) (en banc) (upholding constitutionality of Va. Code Ann. §§ 2.1-804 to -806 as applied to public university faculty).

2. This Court's public forum cases do not require gerrymandering a library's collection according to the type of medium.

The First Amendment does not require library computers to be segregated from the rest of a library's collection for purposes of forum analysis. The district court held that the First Amendment required disparate treatment of a library's computer terminals because of the uniqueness and vastness of the Internet as a medium. Therefore, according to the court, because libraries cannot, due to the immensity of the task, review all Internet materials, the First Amendment requires that they forfeit the right to exercise any content-based control over Internet access. *See* 201 F. Supp. 2d at 462-63.

There is no constitutionally sound basis for distinguishing between a library's print collection and its computer terminals with Internet access. Just as libraries need not provide the complete works of Jacqueline Susanne, they need not provide access to all that is on the Internet. If, for example, libraries offered cable television access to patrons, no one could seriously maintain that libraries must also offer the Playboy and Spice channels. If, however, excluding the Playboy and Spice channels also entailed the loss of the History and Discovery channels,[5] nothing in this Court's First Amendment jurisprudence suggests that such a loss would violate the First Amendment, even though both channels air constitutionally-protected material that the library might otherwise offer. The television belongs to the library; its decision about what programming to offer should

[5] As anyone with cable television service knows, most cable companies sell their services by offering packages whereby the subscriber must often accept subscription to undesired channels to receive desired channels.

not be the subject of judicial review any more than is its decision about what book to place on its featured best seller shelf. The technical infeasibility of surgically excising inappropriate material should not serve as a justification for compelling libraries to offer the Playboy and Spice channels.

The First Amendment protects against the official suppression of ideas, *see Regan v. Taxation With Representation*, 461 U.S. 540, 550 (1983), not against the removal (inadvertent or otherwise) of resources from government property. Removing materials from government property is no more an unconstitutional suppression than refusing to acquire the same materials. *See Pico*, 457 U.S. at 892 (Burger, C.J., joined by Rehnquist, J., Powell, J., and O' Connor, J., dissenting) (the coincidence of timing should not serve as the basis of a constitutional holding). *See also id.* at 916 (Rehnquist, J., dissenting) ("[T]his distinction between acquisition and removal makes little sense. The failure of a library to acquire a book denies access to its contents just as effectively as does removal of the book from the library's shelf.").

There is no constitutional right to have immediate, anonymous, government-subsidized access to all available speech, just because the speech is on the Internet. Just as nothing in the First Amendment compels a library to be the courier of what a private speaker has to say, nothing in the First Amendment confers a right to have certain speech "affirmatively provided at a particular place by the government." *Pico*, 457 U.S. at 888 (Burger, C.J., joined by Rehnquist, J., Powell, J., and O'Connor, J., dissenting).

> The government does not "contract the spectrum of available knowledge ... by choosing not to retain certain books on the school library shelf; it simply chooses not to be the conduit for that particular

> information. In short, ... *there is not a hint in the First Amendment, or in any holding of this Court, of a "right" to have the government provide continuing access to certain books.*

Id. at 888-89 (emphasis added).

To hold that the vastness of Internet resources precludes libraries from exercising editorial discretion over Internet access on scarce library computers imposes an untenable "all-or-nothing," choice on libraries. *Arkansas Educ. Tele. Comm'n*, 523 U.S. at 680. If library computers with Internet access are public fora, and any attempt to impose content-based controls on the use of library computers with Internet access meets with strict scrutiny, then any library patron would have a constitutional right to access any legal materials on library computers. Library patrons could, for example, download pornography, access dating services, or shop for "Beanie Babies," regardless of the fact that such activities are inconsistent with the traditional mission of public libraries, and therefore with library policies concerning preferred uses of scarce computer terminals. Under the district court's reasoning, what library patrons use computer terminals for when accessing the Internet (short of obscenity, child pornography, and with respect to minor patrons, material harmful to minors) is ultimately none of the library's business.[6] Therefore, even

[6] The district court was apparently undisturbed by the grave constitutional difficulties inherent in supposedly less restrictive means of controlling Internet use on library computers. For example, "tap on the shoulder" policies, *see, e.g.*, 201 F. Supp. 2d at 482, raise a far greater risk of intentional censorship than do filters. As the district court conceded, filters *inadvertently* block constitutionally protected speech, and such inadvertent blocking is easily remedied by disabling the filter. By contrast, a librarian taps a patron's shoulder *intentionally* and the patron has little choice but to obey the librarian, whether or not the material being viewed is constitutionally protected.

"tap on the shoulder" policies become constitutionally suspect.

The First Amendment does not forbid libraries from using reasonable tools to maximize preferred uses of library computers. Filters help libraries allocate the limited amount of Internet access they can afford in a manner most compatible with their role in the community.

B. Filtering Public Library Computers Does Not "Distort the Medium" of the Internet.

Again confusing the Internet itself with public library computers (which is the forum to which access is sought), the district court erroneously reasoned that because filters inadvertently block constitutionally protected speech, they distort the "marketplace of ideas that the state has created in establishing the forum." *See* 201 F. Supp. 2d at 461.

Far more egregious, however, is the violation of the librarian's and other patrons' interest in being free from unwanted exposure to highly offensive pornography. To effectively monitor patrons' access to illegal materials, librarians must necessarily be exposed to a range of sexually explicit material, including what most would consider grossly offensive. They cannot "avert their eyes," *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 211 (1975), and because they are captive as employees charged with the duty to monitor patrons' Internet use, their interest in being free from exposure to both legal and illegal pornography is violated. *See Rowan v. Post Office Dept.*, 397 U.S. 728, (1970). To say that librarians and patrons can look away "is like saying the remedy for an assault is to run to away after the first blow." *FCC v. Pacifica Foundation*, 438 U.S. 726, 749 (1978). Even assuming most libraries are able to find one librarian who is willing regularly to view online pornography, *see* F. Supp. 2d at 482, it is ridiculous to expect librarians to decide what is obscene when even this Court has struggled with such determinations. *See, e.g., Miller v. California*, 413 U.S. 15, 20-23 (1973) (acknowledging "the somewhat tortured history of this Court's obscenity decisions" due to the Court's concern that "in the area of freedom of speech and press the courts must always remain sensitive to any infringement on genuinely serious literary, artistic, political, or scientific expression").

Filters do not distort the medium itself. They merely limit what may be *immediately* accessed on government property. In the cases relied upon by the district court, this Court struck down laws restricting speech on various media, because the laws themselves intentionally targeted what speakers could say in a given medium. *See, e.g., Reno v. ACLU*, 521 U.S. 844 (1997) (holding unconstitutional the Communications Decency Act which imposed *criminal* penalties on certain web publishers); *Ashcroft v. Free Speech Coalition*, 122 S. Ct. 1389 (2002) (striking down provisions of the Child Pornography Prevention Act, a criminal statute targeting certain speech on the Internet); *FCC v. League of Women Voters*, 468 U.S. 364 (1984) (striking down prohibition against editorial speech by public broadcasting stations); *Legal Services Corp. v. Velazquez*, 531 U.S. 533 (2001) (declaring unconstitutional a ban on certain attorney speech because the ban distorted the traditional role of attorneys in presenting to the courts a full range of arguments on behalf of clients). In these cases, however, the concern about "distortion" arose because the law at issue intentionally targeted, and thus would have chilled, if not eliminated, speech within the medium itself.

By contrast, a library's use of filters, and therefore CIPA, has no effect on the Internet as a medium. Because filters are confined to individual computers, they do not affect speech on the Internet itself. They cause no "distortion" of the medium. Rather, filters only limit what is *immediately* available at public expense on library computers. The Internet exists unimpeded regardless of what public libraries do. If no library in the country provided Internet access, the current state of the Internet would be unaffected. By providing even filtered Internet access, libraries are expanding, not restricting patrons' Internet access. And, as with any speech, what may be

unavailable at a given library is certainly available in numerous other places, including other computers with Internet access. There is no First Amendment right to demand that government pay for access to speech that is fully available elsewhere.

That some residents in poor communities may not have other means of Internet access does not change this. This Court long ago rejected the notion that constitutional rights, even those of poor citizens, must be subsidized by the government to be fully realized. *See, e.g.*, *Maher v. Roe*, 432 U.S. 464, 469 (1970) (upholding Connecticut's decision not to subsidize indigent woman's right to abortion; "the Constitution does not provide judicial remedies for every social and economic ill"). There are innumerable sources of information, even about "sensitive issues" such as the practice of so-called safe sex. For example, the National Center for Disease Control provides this kind of information. While the Internet may often provide the most convenient source of information, it would be a stunning distortion of the First Amendment to say that it guarantees a right to receive information at public expense at the quickest and most convenient source. In any event, filters only temporarily limit access to constitutionally protected speech. Where filters block materials that libraries would normally make available, the material can be had for the asking, in no more intrusive a fashion than a request for an Inter-library loan.

In sum, library computers are one component of the library's collection. Library computers, like the library's print collection are a nonpublic forum. Libraries may accordingly place limitations on the acceptable subject matter that can be accessed "so long as the distinctions drawn [between acceptable and unacceptable subjects] are reasonable in light of the purpose served by the forum and

are viewpoint neutral." *See Cornelius v. NAACP Legal Defense & Educ. Fund*, 473 U.S. 788, 806 (1985). The mere risk of viewpoint discrimination is not enough to justify stripping libraries of their control over the use of computers with Internet access. *See Arkansas Educational Television*, 523 U.S. at 676. Limitations that libraries put on Internet access need not even "be the most reasonable," and "[t]he First Amendment does not demand unrestricted access to a nonpublic forum merely because use of that forum may be the most efficient means of [receiving] a speaker's message." *Cornelius*, 473 U.S. at 808-09.

II. LIBRARY PATRONS DO NOT HAVE A FIRST AMENDMENT RIGHT TO ACCESS MATERIALS IN A LIBRARY'S COLLECTION IMMEDIATELY AND ANONYMOUSLY.

In addition to holding that library patrons have a First Amendment right to access any constitutionally protected speech on library computers, the district court held that the First Amendment guarantees patrons immediate and anonymous access to such speech. *See* 201 F. Supp. 2d at 486-87. Rejecting the government's argument that CIPA's disabling provisions cure any constitutional infirmity in CIPA, the court erroneously ruled that requiring patrons to request the disabling of a blocked website violated the First Amendment right to receive information anonymously. *Id.* The court reached this startling conclusion in the face of evidence that it was technically feasible for libraries to process requests for unblocking anonymously. *Id.* at 487. The court also ruled that even waiting for websites to be unblocked constituted an impermissible burden on library patrons' First Amendment rights. *Id.* Thus, according to the district court, because the Internet affords users the *possibility* of immediate, anonymous access to information, that possibility is transmogrified into a constitutional right

when using a library computer. This is so even though library patrons do not enjoy either anonymous or immediate access to other materials in a library's collection.

Anyone who has ever used resources in a public library knows that such use usually entails the loss of anonymity, and often a wait for desired materials. For example, library patrons may not even obtain a library card without divulging name, address, and phone number. Librarians can readily discover precisely what materials patrons have checked out. There is often an extended wait for a library's copy of a bestseller. Reference materials are often inaccessible and must be requested from reference librarians. Before requesting an Inter-Library loan, a patron usually must give librarians identifying information so that the library can notify the patron when the materials have arrived. There is often an extended wait before the materials arrive. Thus, the notion that library patrons have a constitutional right to immediate, anonymous access to materials in a public library's collection is patently absurd. If patrons do have such rights, then public libraries must dramatically change their traditional mode of operation. Indeed, no library could accommodate all these "rights" and remain a viable institution.

There is no constitutionally significant difference between an Inter-Library loan request and a request to disable an Internet filter. In both cases, the materials are not immediately available from a library's collection. In neither case is the potential embarrassment to the patron greater. Indeed, a library patron is more likely to secure access to a blocked website without having to reveal his identity than when requesting an Inter-Library loan.

This Court's decisions addressing the right to receive information anonymously are inapposite because they

concerned laws that burdened a private citizen's right to receive information in his own home. For example, in *Lamont v. Postmaster General*, 381 U.S. 301 (1965), this Court struck down a federal statute requiring recipients of communist propaganda through the mails to explicitly request delivery of such materials. In *Denver Area Educ. Telecomm Consortium v. FCC*, 518 U.S. 727 (1996), the Court held unconstitutional a law requiring cable operators to provide pornography only to those subscribers who requested it in writing. These cases provide no support for the novel assertion, which flies in the face of historical library practices, that library patrons have a constitutional right to anonymously access materials in a public library's collection.

Because the materials in a library's collection, even those on the library's computers with Internet access, belong to the library, the library may, without violating the First Amendment, establish the terms upon which library patrons can use them. Any other conclusion threatens the very existence of public libraries.

CONCLUSION

CIPA merely encourages libraries to do what the First Amendment permits, which is to exclude child pornography, obscenity, and materials harmful to minors from a nonpublic forum because they hinder the purposes that libraries serve. CIPA is not aimed at the suppression of ideas. It is aimed instead at the clearly proscribable evil of pornography in a public place that historically has been "dedicated to quiet, to knowledge, and to beauty." *See Brown v. Louisiana*, 383 U.S. 131, 142 (1966).

For the foregoing reasons, and those expressed in Appellants' brief, this Court should reverse the judgment below and hold that CIPA is constitutional.

Respectfully submitted,

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